

In the High Court of Judicature at Madras

Dated: 01.03.2005

Coram:

The Honourable Mr. Justice S.R.SINGHARAVELU

Second Appeal Nos. 249 and 288 of 1994

Gurumani Vinayagar Temple and
Kannanur Mariamman Temple,
by its fit Person at
Kodikalkuppam Village,
Vandipalayam,
Cuddalore Taluk

...Appellant in both Appeals/ Plaintiff

...vs...

Somu

..Respondent in S.A.249/1994/ Defendant No.2

Selvaraj

..Respondent in S.A.288/1994/ Defendant No.1

Second Appeals filed under Section 100 of Civil Procedure Code against the common judgment and decrees dated 28.08.1992 in A.S.No.146 and 144 of 1991 respectively on the file of Additional Sub Court, Cuddalore, reversing the judgment and decree dated 09.04.1991 in O.S.No.890 of 1987 on the file of Additional District Munsif Court, Cuddalore.

For Appellant : Ms.P.V.Rajeswari

For Respondents : Mr.R.Subramanian in SA No.288/94

Mr.S.K.Raghunathan in SA No.249/94

COMMON JUDGMENT

These Second Appeals are directed against the decrees of the Additional Sub Court, Cuddalore, dated 28.08.1992 in a common judgment in A.S.144 of 1991 preferred by 1st defendant and A.S.146 of 1991 preferred by 2nd defendant in respect of the decree passed by the Additional District Munsif, Cuddalore on 09.04.1991 in O.S.890 of 1987.

2. While admitting the Second Appeals, the following substantial questions of law were framed:

(1) Is not the judgment of the lower Appellate Court hit by the principles of res judicata based on Exs.A-1 to A-5 ?

(2) Whether the first defendant is estopped from re-

opening the point regarding the title to the suit properties once again ?

(3) Whether the lower Appellate Court committed an error of law in reversing the well considered judgment of the trial Court on unsustainable grounds ?

3. The suit was filed by the appellant/plaintiff for recovery of possession of the suit properties consisting of five items of lands situate at Kodikalkuppam Village within Cuddalore Municipality limits.

4. There were earlier proceedings regarding the suit properties. Regarding the said properties, there was an endowment created under a Will. That Will was executed by one Rathnam Pillai on 25.07.1903. That endowment created certain obligations to be performed in favour of the idol of the plaintiff temple and the right of management was vested with the heirs of the said Rathnam Pillai.

5. Somasundaram Pillai, the son of Rathnam Pillai had filed a suit in O.S.92 of 1961 claiming hereditary trustee of the appellant temple. In that suit, this Will dated 25.07.1903 by Rathnam Pillai was marked with consent of the Commissioner of HR & CE, who was also a party in that suit, as Ex.A-2 and the Division Bench of this Court, while dealing with the appeal preferred by Somasundaram Pillai in Appeal No.297 of 1963, the copy of the judgment of which was marked as Ex.B-1, made the following observation;

"We may also add that the fact the plaintiff's claim to the hereditary trusteeship of the temples has been negated, does not affect his right to be the trustee of the endowment. Under the powers conferred by the document Exhibit A-2, the plaintiff will be entitled to be in possession and management of the properties and utilise the income of the properties as specified in Exhibit A-2".

Anyway Somasundaram Pillai could not succeed in his claim for hereditary trusteeship.

6. Somasundaram Pillai again filed a suit in O.S.2357 of 1981 for declaration of his title and for permanent injunction in respect of the same properties. In that suit also, the Will was a subject matter and an issue was also framed and it was held that the Will has not been proved; the appeal proceedings were all dismissed. The connected documents were marked as Exs.A-1 to A-5.

7. Counsel for the appellant / plaintiff contended that the findings in O.S.2357 of 1981 will operate as res judicata against the 1st defendant, who is none else than the son of Somasundaram

Pillai. True it is that properties are the same in both this suit as well as in O.S.2357 of 1981. Although the parties are not exactly the same inasmuch as Commissioner was the party to the earlier proceedings representing the interest of the plaintiff temple and since Selvaraj is none but the son of Somasundaram Pillai, who was actually agitating against this plaintiff temple, we can hold that the parties are also same.

8. Counsel also relied upon the decision reported in C.V.RAJENDRAN AND ANOTHER ..vs..N.M.MUHAMMED KUNHI (2002 (5) CTC 612), wherein it was mentioned that

"principle of res judicata applies as between two stages in same litigation so that if issue had been decided at earlier stage against party, it cannot be allowed to be re-agitated by him at subsequent stage in same suit or proceedings".

By relying upon the same, it has been submitted that the present 1st respondent Selvaraj, who is none but the son of Somasundaram Pillai and who claims under Somasundaram Pillai, cannot be allowed to re-agitate the issue, that was finally decided in O.S.2357 of 1981. This argument will be acceptable only if it is found that the issue in that suit is the same as that in the present proceedings.

9. Here, we are not concerned about the ownership of suit lands as to whether it vests with the appellant / plaintiff temple or otherwise. True it is that the claim of predecessor of 1st defendant namely, Somasundaram Pillai, for exclusive right and title in suit properties made in the earlier suit in O.S.2357 of 1981 was dismissed. But the said Selvaraj, the respondent / 1st defendant resists this case not upon the basis of his title to the suit properties, but he resists by contending that the heirs of Rathnam Pillai, the testator of the Will of the year 1903, has got a right of possession and right of management over the suit properties. This has been fortified by the Will, which has been marked before the first appellate court as Ex.B-4.

10. It is worth-mentioning that there is an observation by the Division Bench of this Court in A.S.297 of 1963 by relying upon the present Ex.B-4 Will, which was marked as Ex.A-2 in that proceedings and that the same was marked by consent and according to their observation, Somasundaram Pillai, the father of present respondent/1st defendant had right to be in possession and management of the suit properties, which were endowed by Rathnam Pillai under his Will of 1903 with the specific directions that the said obligations should be performed by his heirs towards idol of the appellant/ plaintiff temple.

11. It is this right of management of the appellant/ plaintiff can as well be recognised, despite the applicability or non-applicability of Section 11 C.P.C. In this connection, the position of law has been laid as follows in K.M.Rathinam Nadar and another ..vs.. Arulmigu Hanumantharayar Bhajanai Madam @ Hanumar Kovil rep.by its hereditary trustee Tmt.L.Padmavathiammal (1996 TLNJ 131 at page 138).

The above judgment of the Supreme Court places the matter beyond doubt. Even if the judgment of this Court in the prior proceedings cannot be treated as a judgment in rem, it can certainly be treated as a precedent inasmuch as it decides the character of a temple. It should be noticed that the question whether a temple is a private or a public one is essentially between the persons who claim it to be private temple and the Hindus Religious and Charitable Endowments Department. Once as between them the said question has been decided one way or other, that should be treated as a precedent in a subsequent case if the question arises between some third parties and one of the parties to the earlier proceeding".

12. Thus it is made clear that respondent / 1st defendant has got a right of management and right of possession and that is why he has been issued with patta under Ex.B-2 in 1970 and he had also entered into tenancy with 2nd defendant under Ex.B-3. Unless the appellant/ plaintiff shows a better title, the appellant may not be entitled for recovery of possession.

13. As mentioned supra, the issue in first round of litigation in O.S.92 of 1961 was that of the hereditary trusteeship of Somasundaram Pillai. The issue in the second round of litigation in O.S.2357 of 1981 was in respect of the exclusive right and title of Somasundaram Pillai who is none but the father of the respondent / 1st defendant. But the issue in this suit is the plaintiff's title on the suit land in one side and the right to be in possession of the respondents / defendants in the suit land. When it has been established that the respondents do have such a right of possession and when it was found that there was no better right clothed upon the appellant / plaintiff, the latter should be non-suited. Thus, the questions of law are answered against the appellant / plaintiff.

14. Second Appeals are dismissed and the judgment and decree of the first appellate Court are confirmed. No costs.

gl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

- 1) The Additional Subordinate Judge,
Cuddalore.
- 2) The Additional District Munsif,
Cuddalore.

Copy to:
The Record Keeper,
V.R.Section,
High Court,Madras.

+ 1 cc to Mr.S.K.Raghunathan, Advocate SR No. 9393

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RA (CO)
SR/14.3.2005

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